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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TED CHRISTIAN JOHNSON

Appeal 2009-006718
Application 10/085,895
Technology Center 2400

Before LANCE LEONARD BARRY, STEPHEN C. SIU, and
DEBRA K. STEPHENS, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-28. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

The invention relates to a system and method for authenticating sessions and other transactions (Spec. 1, ll. 9-10).

Independent claim 1 is illustrative:

1. A method for authenticating a Web session comprising:
receiving a user ID;
computing a message digest of the user ID;
computing an expiration timestamp for the session;
selecting an index number;
combining the message digest and expiration timestamp;
accessing an encryption key using the index number;
encrypting the combined message using the accessed encryption key; and
converting the encrypted message into an ASCII string.

References

The Examiner relies upon the following references as evidence in support of the rejection:

Reiche	US 6,092,196	Jul. 18, 2000
Swartz	US 6,095,418	Aug. 1, 2000

Stern	US 6,110,044	Aug. 29, 2000
Brothers	US 2002/0083178 A1	Jun. 27, 2002 (filed Aug. 3, 2001)
Tan	US 6,490,353 B1	Dec. 3, 2002 (filed Nov. 23, 1998)
Krishnaswamy	US 6,909,708 B1	Jun. 21, 2005 (filed Nov. 18, 1996)

T. Berners-Lee, et al., *Uniform Resource Locators (URL)*, Request for Comments 1738, p. 5 (Dec. 1994) (“Berners-Lee”)

Verio Glossary Website, *P*, p. 1 (Oct. 31, 2001) (“Verio”)

Rejections

Claims 17-20 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1, 2, 4, 5, 8-13, and 17-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiche and Brothers.

Claims 3, 14, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiche, Brothers, Berners-Lee, and Verio.

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiche, Brothers, and Krishnaswamy.

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiche, Brothers, and Tan.

Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiche, Brothers, Berners-Lee, Tan, and Verio.²

² In rejecting claim 16, the Examiner does not list Verio as a reference, even though Verio is used in rejected parent claim 14. We hold this minor oversight harmless.

Claim 25 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiche, Brothers, and Swartz.

Claims 26-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiche, Brothers, and Stern.

ISSUES

Issue 1

Appellant argues that the Examiner's 35 U.S.C. § 101 rejection "is inconsistent with the U.S. Patent & Trademark Office's treatment of countless other applications" (App. Br. 6).

Issue: Did the Examiner err in finding that the system claims are directed to non-statutory subject matter?

Issue 2

Appellant argues that "Reiche doesn't disclose accessing an encryption key using the index number" (App. Br. 9).

Issue: Did the Examiner err in finding that Reiche and Brothers would have taught or suggested encrypting a combined message using an encryption key accessed using an index number?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

1. The Specification discloses that "logic 150 may be implemented in hardware, software, microcode, or a combination thereof" (p. 15, ll. 13-14).

2. Reiche discloses that “information is then encrypted (step 258) using . . . a simple private key encryption algorithm, UUencoding and URL [uniform resource locator] encoding the data” (col. 10, ll. 21-24).
3. Brothers discloses that “[i]f more than one key is used in the system 10, the secure URL generator module can also append key index data indicating the key to be used by the RDS [resource distribution subsystem] 16 to verify a request to access the resource from the WAD [web access device] 12” (§ [0104]).

PRINCIPLES OF LAW

Patentable subject-matter

A claim that recites no more than software, logic, or a data structure (i.e., an abstraction) does not fall within any statutory category of patentable subject matter. *In re Warmerdam*, 33 F.3d 1354, 1361 (Fed. Cir. 1994).

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results,” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007), especially if the

combination would not be “uniquely challenging or difficult for one of ordinary skill in the art,” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418).

ANALYSIS

Issue 1

Appellant submits that the Examiner’s 35 U.S.C. § 101 rejection is inconsistent with United States Patent and Trademark Office treatment of similar claims in other applications. Based on Appellant’s arguments in the Appeal Brief, we will decide the appeal of claims 17-20 with respect to issue 1 on the basis of claim 17. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We are not persuaded by Appellant’s arguments, which fail to identify any error in the substance of the Examiner’s rejection. It is irrelevant to the present case whether patents have issued with similar claims to those rejected. The boundaries of patentable subject-matter are challenging to map precisely, with controlling case law in a constant state of flux as the universe of clues to patent-eligibility is explored. *See, e.g., Bilski v. Kappos*, 130 S. Ct. 3218 (2010).

Furthermore, Appellant seeks to claim a system comprising nothing but logic (claim 17), where logic may be implemented in software (FF 1). This claim is therefore directed to software per se, which falls outside the scope of patentable subject matter. *See In re Warmerdam*, 33 F.3d at 1361.

For at least these reasons, we find no evidence persuasive of error in the Examiner’s 35 U.S.C. § 101 rejection of claim 17, and claims 18-20 which fall therewith with respect to this issue.

Issue 2

Appellant challenges the Examiner's finding that Reiche and Brothers would have taught or suggested encryption using an encryption key accessed using an index number. Based on Appellant's arguments in the Appeal Brief, we will decide the appeal of claims 1-28 with respect to issue 2 on the basis of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant erroneously attacks Reiche individually even though the rejection is based on the combined teachings and suggestions of Reiche and Brothers. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citation omitted).

Reiche teaches encrypting and UUencoding data using a simple private key encryption algorithm (FF 2). Brothers teaches use of key index data that indicates a key to be used by a resource distribution subsystem to verify a request to access a resource (FF 3). Therefore, Reiche and Brothers would have taught or suggested encrypting (i.e., using a simple private key encryption algorithm) a combined message (data) using an encryption key accessed (with a key indicated by) using an index number (key index data).

We are unpersuaded by Appellant's arguments that "Reiche actually teaches away from a system that provides the security offered by the [claimed] authentication method" (App. Br. 9). "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or

would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

Appellant fails to identify any teaching in Reiche that would discourage an artisan from using key index data to indicate which key to use with a simple private key encryption algorithm.

We are also unpersuaded by Appellant’s position that the rationale for combining Reiche and Brothers is merely “the Examiner’s subjective viewpoint of a perceived benefit that would result IF the combination were made” (App. Br. 11). Appellant provides no arguments or evidence to show that the identified teachings and suggestions of Reiche and Brothers are anything more than known methods combined to yield predictable results. Appellant also fails to show that combining these teachings and suggestions would be uniquely challenging or difficult to an artisan possessing creativity and common sense.

For at least these reasons, we find no evidence persuasive of error in the Examiner’s 35 U.S.C. § 103(a) rejection of claim 1, and claims 2-28 which fall therewith with respect to this issue.

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we find no evidence persuasive of error in the Examiner’s findings:

1. that the system claims are directed to non-statutory subject matter (issue 1); and

2. that Reiche and Brothers would have taught or suggested encrypting a combined message using an encryption key accessed using an index number (issue 2).

DECISION

We affirm the Examiner's decisions rejecting claims 17-20 under 35 U.S.C. § 101 and claims 1-28 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc

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